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In Re: Phil A. Aitken, M.D.)	Docket No. MPS 20-0402
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the public, health, safety, and welfare, agreed in the Interim Stipulation and Consent Order to abide by certain requirements related to his practice. Respondent agreed, *inter alia*, to:

- cooperate fully with any further investigation of the matter by the Board of Medical Practice;
- accede to entry of an order by the Board of Medical Practice **conditioning** his license to practice medicine, pending further proceedings or order of the Board;
- treat or see all female patients **only** in the direct presence of a nurse, assistant, clerical notetaker, or other adult individual; such individual was required to be present to act as a chaperone during the care of patients;
- undergo a comprehensive psychosexual evaluation; and carry out in good faith any and all reasonable recommendations or suggestions for further care, treatment, or assessment; and
- accede to entry of any further order of the Board establishing continuing conditions of licensure necessary to protect the public health, safety, and welfare.¹

At all times while this matter has been pending Respondent has provided his full cooperation with the Board of Medical Practice.

5. Respondent, through counsel has maintained continuing contact with the Board regarding his practice activities. Respondent has abided fully with all required terms and conditions of his interim agreement with the Board. Respondent now makes use of chaperones during office visits by female patients. Based on his experience to date Respondent has concluded that the use office chaperones is a sound practice.

A. Evaluation.

6. As required by his Interim Stipulation and Consent Order, Respondent in early 2003 fully cooperated with a comprehensive psychosexual evaluation. He reiterated

1. No further order has been entered by the Board in this matter since the August 7, 2002 Stipulation and Interim Consent Order.

during the evaluation process that he had violated professional boundaries. His position was that he had inappropriately attempt to comfort his patient. He expressly denied his actions were sexually motivated. He indicated that in the course of his practice he felt his responsibility as a physician providing good medical care included offering empathy and concern for his patients, including those in personal distress. In his view, he was often willing to go beyond the limits of his professional specialty to offer help to his patients.

7. The comprehensive psychosexual evaluation concluded that Respondent does not present a general risk to female patients, based on his social and familial supports and his experience in the instant matter. The evaluation, however, provided two specific recommendations, which are reflected in the terms and conditions set forth below. See Paragraphs 15 and 26, below.

8. The Board has received no complaint regarding Respondent's care of patients subsequent to the above evaluation, resulting from the March 2002 patient complaint.

B. Findings/Conclusions.

9. Respondent does not contest the facts set forth above in paragraphs 3 through 8, above, and agrees that the Board of Medical Practice may adopt and enter paragraphs 3 through 8 as uncontested findings of fact and/or conclusions of law in this matter.

10. No specification of charges has been filed in this matter. Respondent has not previously been subject to disciplinary action by the Vermont Board of Medical Practice.

II. General Conditions.

11. Respondent acknowledges here that he is knowingly and voluntarily agreeing to this Stipulation and Consent Order. He acknowledges that he has had advice of counsel regarding the matter before the Board and counsel in reviewing this Stipulation and Consent

Order. He agrees and understands that by executing this document he is waiving any right to be served with formal charges, to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with the evidence against him, to cross-examine adverse witnesses, and to offer evidence of his own to contest the State's charges. 26 V.S.A. § 1356; 3 V.S.A. §§ 809, & 814.

12. The parties to this Stipulation and Consent Order agree that appropriate disciplinary action against Respondent shall consist of the following:

A. Respondent's license to practice medicine shall be designated as "conditioned" for a period of at least 30 months. Toward this end, Respondent shall be credited for all time that his Interim Stipulation and Consent Order with the Board has been in effect. Respondent agrees he shall comply fully and in good faith with each of the express terms and conditions of licensure set forth below, wherever he may practice, until such time as he has been relieved of all conditions herein by express written order of the Vermont Board of Medical Practice.

B. Substantial or repeated failure by Respondent to comply with any of the terms and conditions herein may constitute unprofessional conduct and, if established by the State's evidence, could result in the suspension of Respondent's license to practice medicine and such further disciplinary action as the Board might deem necessary.

C. Respondent shall be publicly **REPRIMANDED** by the Vermont Board of Medical Practice for the violation of professional boundaries that he has acknowledged, *see* paragraph 4, above, in addition to the imposition of the express disciplinary terms and conditions set forth herein and below.

III. Express Terms and Conditions of Licensure.

A. General.

13. Respondent agrees that he has read and carefully considered all terms and conditions herein and agrees to accept and be bound by these while licensed to practice

medicine in the State of Vermont or elsewhere. He agrees to be bound by these terms and conditions until such time as he is expressly relieved of these, in writing, by the Board.

14. Respondent's Vermont license to practice medicine shall be designated as "CONDITIONED" by the Board until all terms and conditions upon his medical license have been removed by written order of the Board. The Board, in its sole discretion, may consider a petition from Respondent for partial relief from or modification of these conditions 30 months after the effective date of this Stipulation and Consent Order, unless a petition for modification at any earlier date is otherwise expressly provided for herein. And see paragraph 12(A), above, as to calculation of this period.

B. Therapy.

15. As an adjunct to the requirements of Paragraph 27, below, Respondent at his own expense shall engage in a course of individual therapeutic counseling with a psychiatrist or Ph.D. psychologist of his own choosing. Respondent shall provide prompt notice to the Board of the name of such treating therapist. The Board in its sole discretion may approve or disapprove the individual so identified by Respondent for the purpose of meeting the requirements of this subsection.

16. Respondent shall engage in a course of therapy that therapy shall address, *inter alia*, the purpose of maintaining appropriate professional boundaries in patient care, as well as means of establishing and maintaining appropriate boundaries during daily contact with patients. The parties contemplate that such therapy shall be at least short-term.²

2. The evaluation referred to in Paragraphs 6 and 7, above, recommended a "short-term" course of therapy for Respondent. The evaluators have recommended that such short-term therapy should consist of approximately twenty sessions of 50 minutes each.

17. Respondent agrees that he shall participate in good faith in therapeutic counseling with such reasonable frequency and duration as the treating practitioner shall deem appropriate. The course of therapy shall continue until the treating practitioner certifies that it is no longer required on an ongoing basis or this agreement is modified in this regard by the Board.

18. Respondent shall provide the treating professional with a copy of this Stipulation and Consent Order; with a copy of the written evaluative results referred to in Paragraph 6, above; and with such other documentation or information as may be requested by the therapist. The course of therapy comprehensively shall address Respondent's current personal needs, past conduct, and future needs as a functioning and ethical medical professional.

19. Respondent shall execute any needed releases and waivers of confidentiality so that the Board may monitor and be provided, without limitation, all information and reports regarding Respondent's participation in therapy, needs, and progress.

20. The treating professional shall provide, if requested, written reports to the Board regarding Respondent's involvement and progress in therapy. The treating professional shall promptly respond to any questions and inquiries from the Board regarding Respondent's involvement and progress in therapy. The Board shall designate the manner and form of such reporting.

21. Respondent agrees he shall actively pursue, in good faith, the course of therapy required above. The Board shall be promptly notified in writing by both the treating professional and Respondent if the treating professional concludes that Respondent no longer

appears to require therapy. The treating professional shall set forth in writing the factors and observations that are deemed to support this conclusion. Respondent may cite such reporting as the basis for any petition to the Board requesting relief from the conditions of this subsection.

22. Respondent agrees that all reasonable recommendations resulting from his course of therapy shall be incorporated as additional terms and conditions of this Stipulation and Consent Order. Respondent expressly agrees that he shall fully and in good faith comply with all such reasonable recommendations. The Board in its sole discretion shall determine Respondent's compliance with this requirement.

23. All evaluative reports and/or assessments or therapist reports, as referred to above, shall be treated as protected by the patient-physician privilege, treated as confidential, and shall not be subject to public disclosure, absent further action by the State in this matter.

C. Practice Supervision.

24. Should Respondent petition to terminate the therapeutic counseling referred to above prior to termination of this agreement, he shall promptly submit to the Board a written plan proposing how monitoring and supervision of Respondent's practice activities thereafter shall be accomplished. Such plan shall provide for regular review of Respondent's practice activities by a supervising practitioner, who shall be proposed to the Board by Respondent in writing and who shall be subject to approval by the Board. Respondent shall meet regularly with his supervising physician to discuss his care of his patients and any concerns or problems that may require attention.

25. The plan for supervision shall provide for written quarterly reports to the Board by the supervising medical professional. Such reports shall address the nature of Respondent's work, his functioning and progress, and how monitoring and supervision of Respondent actually were carried out during the prior quarterly period. Such reports shall be in a manner and form to be determined by the Board. Respondent shall bear responsibility for making reasonable efforts to ensure that such reports are promptly provided to the Board.

D. Patient Care and Use of Chaperones.

26. Respondent agrees that he shall treat or see all female patients **only** in the direct presence of a nurse, assistant, clerical notetaker, or other individual who shall be an adult and who shall be present to act as a chaperone during the care of such patients. Such chaperone shall not be a member of Respondent's family or related to him by birth or marriage. The name of each such individual acting as a chaperone shall be promptly reported to the Board in writing.³ The Board in its sole discretion may approve or disapprove any individual proposed to carry out this role or at a later date may withdraw such approval.

27. The office note for every patient visit or examination shall indicate clearly the name of the individual who acted as the required chaperone. Respondent in all cases shall endeavor to see patients only during normal business hours and with a chaperone in attendance. Should it be necessary to care for a patient in urgent or emergency circumstances Respondent shall endeavor to comply with the requirements of paragraph 24, above, unless attempting to do so might endanger the patient's health or well-being. In any and all such

3. To date, Respondent has complied with all reporting and record keeping requirements regarding his use of chaperones, as set forth in his interim agreement with the Board.

urgent or emergency cases, Respondent shall promptly report the attendant circumstances in writing to the Board.

28. Respondent intends, following the removal of the required conditions on his license to practice medicine, to voluntarily continue the use of chaperones in his practice, in the manner described in paragraphs 26 and 27, above.

E. Education.

29. Respondent agrees that within 12 months of approval of this Stipulation and Agreement he shall satisfactorily complete, at his own expense, educational coursework or programs, subject to review and approval, in its sole discretion, by the Vermont Board of Medical Practice, which shall address the subject of boundary violations by professionals, the prevention of boundary violations, and professional ethics. Such coursework must be eligible for credit as "continuing medical education". Respondent shall complete, within 12 months, eligible credits of at least 20 hours in Category I of the Physician's Recognition Award of the American Medical Association or 20 hours of coursework that is accredited for continuing education credits by the American Psychological Association.⁴ Respondent shall be personally responsible for making reasonable efforts to ensure that documentation of and evaluations of Respondent's participation in and satisfactory completion of such coursework are promptly forwarded to the Board of Medical Practice.

G. Notifications.

30. Respondent agrees that he shall provide a complete copy of this Stipulation

4. Notwithstanding the specific requirements of Paragraph 29, above, the parties agree that Respondent may propose for Board pre-approval coursework or programs from any reputable source that address boundary violations, the prevention of boundary violations, and professional ethics. Any proposed coursework must meet (or be deemed to be substantially equivalent to) the course credit requirements set forth in Paragraph 29.

and Consent Order to any and all licensed practitioners with whom he is associated in practice, to any prospective employer, and to any State medical board or other licensing authority in any location or jurisdiction where he may seek to practice or where he may make application, so long as this agreement remains in effect.

IV. Other Terms and Conditions as to Implementation.

31. Respondent acknowledges and agrees that engaging in unprofessional conduct, as set forth in 26 VSA §§ 1354 & 1398 may constitute prima facie evidence of a violation by him of this agreement. Such circumstances, if established by the State's evidence, shall be sufficient to support findings by the Board that the present terms and conditions of this agreement are inadequate to protect the health, safety and welfare of the public, and thus, may result in a motion by the State for the immediate suspension of Respondent's medical license.

32. The parties agree that this Stipulation and Consent Order shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank and the Federation of State Medical Boards.

33. This Stipulation and Consent Order is subject to review and acceptance by the Vermont Board of Medical Practice and shall not become effective until presented to and approved by the Board. If the Board rejects any part of this Stipulation and Consent Order, the entire agreement shall be considered void. However, should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board, the parties request that (a) the Board enter an order conditioning Respondent's license to practice medicine as, set forth above, and that such license be subject to each of the terms and conditions as set

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forth herein; and (b) that Respondent be publicly **REPRIMANDED** by the Vermont Board of Medical Practice for the conduct set forth herein.

34. Respondent agrees to be bound by all terms and conditions of this Stipulation and Consent Order. Respondent agrees that the Board of Medical Practice shall retain jurisdiction to enforce all terms and conditions of this Stipulation and Consent Order during its lifetimes. Respondent expressly agrees that failure by him to comply with the terms of this Stipulation and Consent Order may constitute unprofessional conduct under 26 V.S.A. §1854(25) and may subject Respondent to further disciplinary action.

Dated at Montpelier, Vermont, this 3rd day of December 2003.

WILLIAM H. SORRELL
ATTORNEY GENERAL

by:

James S. Arisman
JAMES S. ARISMAN
Assistant Attorney General

Dated at South Burlington, Vermont, this 3rd day of December 2003.

Phil Aitken 12-3-03
PHIL A. AITKEN, M.D.
Respondent

Dated at BURLINGTON, Vermont, this 2nd day of December 2003.

John W. O'Donnell
JOHN W. O'DONNELL, ESQ.
Counsel for Respondent

Office of the
ATTORNEY
GENERAL
108 State Street
Montpelier, VT
05609

FOREGOING, AS TO MEDICAL LICENSE OF
PHIL A. AITKEN, M.D., APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

<i>John J. Murray MD</i>	<i>James H. Brown MD</i>
<i>Margaret Fink Martin</i>	<i>DA King.</i>
<i>Lewis C. Blowers</i>	<i>Florence Young</i>
<i>Katherine M. Ready</i>	<i>Edward A. Turner MD, JD</i>
<i>Thayer J. T. T. T.</i>	
<i>David W. Clain MD</i>	

DATED: 12/18/03

ENTERED AND EFFECTIVE: 12/18/03

JSA: AITKEN STIPULATION III; 11/03 (NOT EFFECTIVE UNTIL APPROVED BY BOARD OF MEDICAL PRACTICE)